

**REMARKS/ARGUMENTS**

Claims 26-31 and 72-74 are pending in the application. Claims 72-74 have been withdrawn from consideration. Claim 26 has been amended. No new matter has been added. Re-examination and reconsideration of the claims, as amended, are respectfully requested.

**Rejections under 35 U.S.C. § 102**

Claims 26, 27 and 29 were rejected under 35 U.S.C. § 102(b) as being anticipated by PCT Publication WO 99/18871 to Stambaugh et al. (hereinafter referred to as Stambaugh). Such rejections are overcome as follows.

Claim 26 as amended, now recites in part the step of transmitting energy from the energy transmission member to contact tissue of the patent foramen ovale to induce closure of the patent foramen ovale, wherein the energy is applied only from the right side of the heart. Support for this amendment may be found throughout the originally filed disclosure and in particular with reference to Figs. 4, 6A-6B and 7A. The cited Stambaugh reference fails to teach or suggest this newly added limitation.

Stambaugh describes a device that "spans the patent foramen ovale (page 5, lines 19-20) and this is illustrated in Fig. 2. An RF electrode 26 near the distal end is "placed within the foramen ovale and RF energy is applied to heat the adjacent tissue (page 11, lines 17-18) causing "thermal damage to the interior of the foramen ovale (page 11, line 19). As best understood, RF energy is therefore delivered from within the interior of the PFO and hence Stambaugh fails to describe the step of transmitting energy wherein the energy is applied only from the right side of the heart, as amended claim 26 now requires.

Because Stambaugh fails to teach each and every element of claim 26, anticipation under 35 U.S.C. § 102(b) cannot be established. Applicants therefore respectfully request withdrawal of the 35 U.S.C. § 102(b) rejection with respect to independent claim 26 and the dependent claims which depend therefrom.

Double patenting

Claims 26-31 were rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over U.S. Patent No. 6,939,348. Claims 26-31 were provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over U.S. Patent Application Nos. 10/787,532; 11/249,566; 11/472,924; and 11/472,926. Terminal Disclaimers are submitted herewith for each of the above references and Applicants respectfully request that the double patenting rejections be withdrawn.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



Douglas Portnow  
Reg. No. 59,660

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, Eighth Floor  
San Francisco, California 94111-3834  
Tel: 650-326-2400  
Fax: 415-576-0300  
Attachments  
D3P:jke  
60929983 v1